

ISSUE DATE: December 23, 1996

DOCKET NO. P-3134/C-94-151

ORDER SETTING COMMENT PERIOD

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Marshall Johnson
Dee Knaak
Mac McCollar
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Complaint against the
Association of Long Distance Users, Inc. for
Providing Long Distance Services without
Commission Authority

ISSUE DATE: December 23, 1996

DOCKET NO. P-3134/C-94-151

ORDER SETTING COMMENT PERIOD

PROCEDURAL HISTORY

On May 18, 1993, the Minnesota Public Utilities Commission received an anonymous complaint alleging that the Association of Long Distance Users, Inc. (ALDU or the Company) was providing unauthorized telecommunications service in Minnesota. The Commission forwarded the complaint to the Department of Public Service (the Department) for investigation.

On June 9, 1993, the Department notified ALDU of the complaint and asked ALDU either to respond to the complaint or to file for a certificate of authority.

On June 23, 1993, ALDU responded, denying that the Company was providing unauthorized service in Minnesota. ALDU stated that it was a cooperative buying association, not a telephone company providing telephone service to the public.

On February 14, 1994, the Department filed a complaint with the Commission, alleging that ALDU was providing telecommunications service in Minnesota in violation of the certification requirements of Minn. Stat. § 237.74, subd. 12. The Department charged that ALDU is acting as a telephone service aggregator and establishing contracts with telephone carriers for the benefit of the Company's clients. The Department also stated that ALDU is purchasing telephone service from AT&T, because AT&T believes that ALDU is responsible for payment for any outstanding bills of end-users.¹ For these reasons, the Department argued, ALDU is offering telecommunications service as a reseller to the general public.

On March 8, 1995, ALDU filed a motion to dismiss and an answer to the Department's complaint. ALDU stated that the Department's complaint was fatally defective in form and that ALDU does not require Commission authority to operate as a tariff consultant and manager for its members. ALDU stated that there are significant facts in dispute and that the Company has a right to a contested case hearing to resolve the issues.

The matter came before the Commission for consideration on December 3, 1996.

¹ AT&T's claim is currently a matter of dispute between ALDU and AT&T.

FINDINGS AND CONCLUSIONS

Minn. Rules, part 7829.1800, subp. 1 provides that the Commission shall review a formal complaint to determine whether the Commission has jurisdiction over the matter and whether there are reasonable grounds to investigate the allegation.

The Department has filed a formal complaint which meets the standards of Minn. Rules, part 7829.1700. Upon review of the complaint, the Commission finds that it has jurisdiction over the matters raised.

In its complaint, the Department alleges that ALDU is providing unauthorized service as a telephone company or a telecommunications carrier. The Commission has jurisdiction over telephone companies and telecommunications carriers under Minn. Stat. Chapters 216A and 237. The Commission thus has jurisdiction over the matters raised in the complaint.

A discrepancy currently exists between the facts alleged by the Department in its complaint and the facts cited by ALDU in its response. The facts relate to the Company's authority to do business in the State of Minnesota. Reasonable grounds thus exist to investigate this complaint.

The Commission will investigate the allegations raised by the Department. The Commission notes that ALDU has already filed an answer to the Department's complaint. The Commission will therefore vary the requirement to file an answer found in Minn. Rules, part 7829.1800, and will allow the previously filed complaint and answer into the record in this proceeding. The variance of the rule requiring the filing of an answer fulfills the criteria for granting a rule variance found in Minn. Rules, part 7829.3200. Enforcement of the rule would impose an excessive burden upon ALDU, because the Company previously filed a voluntary answer to the Department's allegations. Granting the variance would not adversely affect the public interest, because the answer was a procedurally adequate response to the Department's allegations. Granting the variance will not conflict with standards imposed by law.

ORDER

1. The Commission initiates an investigation of the allegations raised by the Department.
2. The Commission varies Minn. Rules, part 7829.1800, subps. 2 and 3 to allow the previously filed complaint and answer to be accepted into the record. Should ALDU wish to file a supplemental answer, it shall do so within 20 days of the date of this Order.

3. Within 30 days of the expiration of the 20 day period referenced in the preceding paragraph, the Department, ALDU, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), and any other interested persons may submit initial comments pursuant to Minn. Rules, part 7829.1900, subps. 2,4, and 5.
4. Within ten days of the close of the initial comment period, the Department, ALDU, the RUD-OAG, and any other interested persons may file responsive comments.
5. Parties filing comments pursuant to paragraphs three and four above shall address the following issues:
 - if ALDU has violated Minn. Stat. § 237.74, subd. 12, what, if any, Commission action or penalty is warranted?
 - with respect to the allegations made against ALDU, what consideration should be given to Commission findings in the following proceedings: 1) the request of Telegroup, Inc. for a certificate of authority in Docket No. P-3025/NA-90-99; 2) the request of Advanced Communications Technology for a certificate of authority in Docket No. P-3094/NA-92-534?
 - are there any other relevant issues the Commission should consider?
6. All comments must be served upon ALDU, the Department, the Commission, the RUD-OAG, and any other interested parties.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).